IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.1.2005

CORAM:

THE HON'BLE MR. JUSTICE V.KANAGARAJ

W.P.Nos.19822 & 19823 of 2004
and
W.P.M.P.Nos.38732 and 38733 of 2004

1. Selvamani .. Petitioner in W.P.No.19822/2004

2. Vallimuthu .. Petitioner in W.P.No.19823/2004

Vs.

1. The Government of Tamilnadu
rep by Secretary to Government
H. & U.D. Department
Secretariat
Chennai - 600 009.

2. Chennai Metropolitan Development
-Authority
rep. By its Member Secretary
Egmore, Chennai-600 008.

3. Tamilnadu Housing Board
rep. By The Managing Director
Chennai - 600 035. .. Respondents in both the W.Ps

Writ Petitions are filed under Article 226 of the Constitution of India for issue of Writ of Mandamus as stated therein.

For Petitioners : Mrs. Vijayalakshmi
For 1st respondent : Mr.M.Mahalingam, Govt. Advocate
For 2nd respondent : Mr.Somayaji, Addl.
Advocate General
For M/s V.Perumal & K.Kamaraj
For 3rd respondent : D.Veerasekaran

...

COMMON ORDER:-

The above writ petition in W.P.No.19822 of 2004 has been filed praying to issue a writ of mandamus directing the respondents to return back the land in Old Survey No. S.No.58/1A New S.No.58/16 Koyambedu Village, Egmore, Nungambakkam Taluk, Chennai in an extent of 4.13 acres acquired by the respondents belonging to the petitioner as per notification issued in Gazette dated 30.5.1990. Writ

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Petition No.19823 of 2004 has been filed praying for a similar relief of writ of Mandamus in respect of Old S.No.58/1A New S.No.58/16, in the same village measuring an extent of 4.13 cents under the same Gazette publication.

2. In the affidavit filed in support of the writ petition No.19822/2004, the petitioner has averred that Old S.No.58/1A, New Survey No.58/16, Koyambedu Village, measuring an extent of 4.13 acres belonged to him and under Gazette Notification dated 30.5.1990, the respondents initiated acquisition proceedings and in accordance with the enquiry held under Section 5-A of the Land Acquisition Act on 9.8.1990, Award No.2/13 had been passed by the Land Acquisition Officer and on reference made under Section 18 of the Land Acquisition Act, 1894 the petitioner filed L.A.O.P.No.6/1994 for enhancement of the award amount. The said L.A.O.P.No.6 of 1994 was dismissed for default on 23.8.1995 and he received the compensation under protest. According to the petitioner, his land located outside the bus terminal has not been utilied by the respondents and has been left as vacant land till date. According to the petitioner, he has no other land and for his family, the said land is absolutely necessary. Hence the above writ petition.

3. In the affidavit filed in support of W.P.No.19823 of 2004, the petitioner therein has averred that Old Survey No.58/1, New Survey No.58/16 measuring an extent of 4.13 cents has been acquired under Gazette Notification dated 30.5.1990; that even though, he made objections in the enquiry held under Section 5-A of the Land Acquisition Act, 1894 overruling his objection, award has been passed on 19.5.1993 and he filed L.A.O.P.No.6/1994 and that was dismissed for default on 23.8.1995. According to the petitioner, his land is situated outside the bus terminal and that he does not have any other land and this land is very much required for him. Hence the above writ Petition.

4. In the counter affidavits filed by the second respondent in both the above writ petitions, besides tracing the acquisition proceedings, he would submit that the acquired land was fully utilised for truck parking terminal branding the allegations of the petitioners as false. It would further be averred that the respondent authority has fully developed the lands acquired and the Koyambedu Wholesale Market is functioning there; that the Mofussal Bus Terminal has also been constructed and functioning inasmuch as Omni Bus Stand; that the respondents would not also accept the repayment of the award amount, as the land acquired has been fully developed to a considerable extent to accommodate the wholesale market truck parking terminal etc.,; that the petitioners have been paid the compensation and after a lapse of 11 years they have come forward to pray for transferring the lands in their favour and on such grounds would seek to dismiss both the above writ petitions.

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5. During the arguments the learned counsel appearing on behalf of the petitioners in both the above writ petitions besides tracing the history of the case and furnishing the details as to how the properties in question have been acquired voluntarily by the Government in the name of serving public cause paying a paltry sum of compensation to the petitioners without utilising for the purpose for which the properties have been acquired from the petitioners and they are lying vacant till today. The learned counsel would further give a picture of the present state of affairs so far as the subject matter is concerned offering details such as that trees, shrubs and bushes have grown in the lands since left un-cared and un-utilised for any constructive purpose much less for the purpose for which it has been sought to be achieved on the part of the Government at the time of acquiring the land. The learned counsel would also bring to the notice of this Court that those who are residing adjacent to the lands have been tying their cattle under the tree grown and even one has put up a small hut encroaching the said land and neither the respondents have made use of the land for any purpose nor any one is permitted to do any activity on the land and it is lying waste without being used for any constructive purpose and the petitioners are entitled under law in the circumstances of the case. It should further be contended that the petitioners are ready to return the award amount and on such strong grounds the petitioners would pray to grant the relief sought for in both the above writ petitions. The learned counsel would also site an unreported order delivered by a learned single Judge of this Court in a similar case wherein the property acquired has not been utilised for the purpose for which it has been acquired, the said land has been directed to be returned to the original owner, subject to the return of the compensation amount received by the original owner with a simple interest at 9% per annum from the date of the receipt of the compensation amount till the date of payment. The said order has been made in Writ Petition No.8283 of 1999 on 30.2.1999.

6. On the contrary, on the part of the respondents they would reiterate only what they have pleaded in their counter affidavits and would further cite one unreported judgment rendered by a learned single Judge of this court and the other by a Division Bench of this court respectively passed in W.P.No.9460 of 1991 dated 18.4.1995 and W.A.No.616 of 2002 dated 25.4.2002. In both these adhering to the facts of the cases therein the learned Judges would dismiss the writ petition and the writ appeal. On these arguments, the learned counsel appearing on behalf of the respondents would pray to dismiss both the above writ petitions.

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7. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the

learned counsel for both, what could be assessed by this Court is that both the above writ petitioners have come forward to file the above writ petitions seeking for mandamus directing the respondents to re-convey the lands falling under Old S.No.58/1A and New S.No.58/16 of Koyambedu Village, Chennai, measuring 4.13 acres which have been acquired from the petitioners by the first respondent Government wherein the beneficiaries are the other respondents and the purpose for which these lands were sought to be acquired in the said acquisition proceedings is for the formation of Truck Terminal at Koyambedu Wholesale Market Complex by MMDA. It is relevant to point out that the lands were originally acquired in the year 1975 itself in G.O.RT.No.105 dated 21.4.1975 for the purpose of Mid-West Madras and Neighbourhood Development Scheme putting the same in Tamilnadu Government Gazette on 21.5.1975, but subsequently the acquisition proceeding was quashed by this Court by its order dated 13.10.1981 made in W.P.No.3997 of 1979 canceling the above acquisition. It is only thereafter acquisition proceeding has been initiated in the year 1990 for the second time in G.O.Ms.No.429 dated 14.5.1990 for the purpose of formation of the Truck Terminal at Koyambedu Wholesale Market Complex. It is only as per this acquisition proceeding initiated, the said lands have been taken over by the Government for the said public purpose.

8. It is under these circumstances the petitioners have come forward to file both the above writ petitions after 14 years of the initiation of the said acquisition proceedings seeking to re-convey the acquired properties in question in their favour giving effect to Section 48B of the Land Acquisition Act on the grounds extracted supra, particularly pleading that the lands have not been utilised till date for the public purpose for which they were acquired. The petitioners would further state that they made representations to the first and second respondents on 25.8.2004 requesting to re-convey these lands which have not been utilised for the public purpose for which they were sought to be acquired for the past 14 years, but these respondents never took any step nor gave any reply to their representations.

9. Since the contentions of the petitioners that the lands which are the subject matters have not been utilised for the purpose for which they were acquired were denied by the respondents, further claiming that the said properties have been utilised for the purpose for which they were acquired by parking Trucks, would also be vehemently denied by the petitioners, this court appointed a commission with a direction to note down the physical features of the lands concerned with both the above writ petitions and the learned Advocate Commissioner thus appointed by this Court having inspected the spot and after identifying the property with the help of CMDA personnel would find "the properties described in both the writ petitions are vacant

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lands in New S.No.58/16, Koyambedu Village, to an extent of 4.13 cents in each with no constructions put up therein, except for a thatched hut in the middle of the property described in W.P.No.19823/2004. I have drawn a rough sketch showing the physical features of the properties described in both the writ petitions. I have marked the thatched hut as "T" in my plan which is used as a shelter to the cattle tied under it, by some unknown persons."

10. The learned commissioner would further state that the properties mentioned in both the writ petitions are lying adjacent to each other... that there is a compound wall of the bus terminal separating the petition mentioned properties from the bus terminal... she found that the petitioners' properties are lying totally outside the said compound wall of the bus terminal as shown in the plan.

11. The learned commissioner would further find that 'the land of the properties were very damp with slushy soil and there was water stagnation in and around the properties. The land had some thorny bushes and plants standing on them. Some of the plants were found uprooted. The root parts of the above plants were alone left back after the branches of those plants being cut and taken away by some unknown persons. There were also woods found stored by the local residents of the adjacent properties in the western corners of both the petitioners' properties. The local residents had also dumped their household waste along the western parts of the petitioners' properties.'

12. The learned commissioner would further find that the trucks bearing Regn.No.TN 27 6820 and TN 51 5295 were standing in the North-eastern corner of the property described in W.P.No.19822/2004 and the truck bearing Regn.No.TN 01 U 5379 was standing partly in the cart track and in the Southern part of the property in W.P.No.19823/2004. The CMDA officials produced some parking tokens issued by them to the trucks parked therein. When she put a question to the officials of the CMDA as to who is the owner of the thatched shed and the cattle tied under it, they replied that they had no knowledge about the thatched shed nor the cattle tied under it. The CMDA officials voluntarily told her that the properties were to be comprehensively developed and they were handicapped from doing so, because of the litigation pending in respect of the surrounding properties. Altogether, she found that the petition mentioned properties are left un-cared and without any maintenance or developments made in them.

13. From the report submitted by the learned Advocate Commissioner one could easily assess from the physical features that the beneficiaries have not made use of the properties concerned with both the above writ petitions for the purpose for which they have been acquired from the petitioners and they are lying vacant. The trucks mentioned in the commissioner's report having been parked in a

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corner of both these lands have been artificially arranged by the respondents 2 and 3 for the purpose of giving an impression to the commissioner that somehow they have been making use of the said lands for parking trucks. From the learned commissioner's report one could understand easily that these lands have been left un-cared for the past 14 years from the time that the same has been taken over from the petitioners. As it could be clearly understood from the learned Commissioner's report and sketch and from the photographs supplied by the petitioners which are the latest in which no truck or any other such activity could be found and therefore, it could be decided that it is only easy for conclusion of anyone much less of this Court that the two trucks have been artificially parked on the date of commissioner's visit to the spot and therefore, it could be decided that it is only an artificially made up show in view of the abundant proof available for the respondents having not used the lands for any purpose for which they were acquired and therefore, Section 48B would go into operation under such circumstances of the case.

14. It is relevant at this juncture to extract Section 48B which has been inserted into the Land Acquisition Act by Land Acquisition (Tamil Nadu Act 1996) (Act XVI of 1997)

> Section 48B "Transfer of land to original owner in certain cases:-
> "Where the Government are satisfied that the land vest in the Government under this Act is not required for the purpose for which it was acquired, or for any other public, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for the acquisition of such land inclusive of the amount referred to in sub-section (1-A) and (2) of Section 23, if any, paid under this Act."

15. It is further relevant for consideration that though the Land Acquisition Act is a Central Act, Section 48B has been introduced by the Tamil Nadu Amendment Act, which cannot be said to be in existence in many other States and therefore, in many other judgments rendered by the upper forums this provision of law would not have been forming part of the discussion nor has there been any possibility for the Courts to consider the applications from the angle of approach of this Section and therefore, without consideration of this particular Section introduced anew by way of amendment, any judgment delivered in the context of such facts in the cases in hand will only become inapplicable and therefore, the cases in hand have to be approached from the angle of Section 48B of the Act which gives enormous powers to the Government to consider and pass orders wherever the lands acquired are not used for the purpose for which they have been acquired, they shall be transferred to the original owner who is willing to

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repay the amount paid to him under the Act.

16. The grievance of the petitioners is that in spite the representations made on the part of the petitioners, to the first and second respondents on 25.8.2004 seeking to re-convey the lands since they were not used for the public purpose for which they were acquired for the past 14 years, and silence is the only answer from the Government for this representation and therefore, the petitioners were left with no choice but to approach this Court seeking the remedy as sought for.

17. It is atrocious on the part of the beneficiaries to have not made use of these lands nor have come forward to give away the lands acquired for the public purpose, but keeping the same vacant without being used for any constructive purpose all these years. It is a national waste and therefore, earlier these lands are directed to be re-conveyed observing those norms provided in Section 48B of the Land Acquisition Act, in favour of the petitioners better it will meet the ends of justice, and hence the following order.

In result,

(i) both the above writ petitions succeed and the same are allowed;

(ii) the respondents are directed to re-convey the lands which are the subject matters of the above writ petitions in favour of the respective petitioners on payment of the award amount paid under the Act with interest at 6% per annum within three months from the date of receipt of the copy of this order;

(iii) however, there shall be no order as to costs;

gr.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Government of Tamilnadu
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   H & UD Department
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2. Chennai Metropolitan Development
   Authority
   rep. By its Member Secretary
   Egmore, Chennai - 600 008.

3. Tamilnadu Housing Board
   rep. By The Managing Director
   Chennai - 600 035.

+ one cc to Mr. D. VEERASEKARAN, Advocate SR 2006

+ Two ccs to Mr. V. PERUMAL Advocate SR (1959 & 1958)

+ Two Ccs to Mrs. VIJAYALAKSHMI, Advocate SR (1955 & 1956)

Pre-delivery order
in W.P.Nos.19822 &
19823 of 2004

TEJ (CO)

NM (11/02/2005)

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